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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,816	12/21/2001	Cliff Pemble	1528.020US1	5372

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EXAMINER

LOUIS JACQUES, JACQUES H

ART UNIT	PAPER NUMBER
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3661

DATE MAILED: 04/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/029,816

Applicant(s)

PEMBLE ET AL.

Examiner

Jacques H Louis-Jacques

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-26 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-10, 12, 14-17, 19 and 27-34 is/are rejected.
- 7) ☒ Claim(s) 4, 11, 13 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments & Arguments

1. The amendments filed along with the arguments on February 17, 2004 have been entered and carefully considered by the examiner.

In light of the amendments, the objection against claims 22 and 25 has been withdrawn.

In regard to the prior art rejection, Applicant's arguments have been considered, but not persuasive.

It is noted that Clark, applied against the claims, discloses a satellite position monitored, i.e., a system for providing high level of confidence in the integrity and accuracy of GPS signals. According to Clark, a selected SBAS (first GPS) satellite broadcasts or transmits correction messages, which are received by a second satellite as well as by GPS users. The recipients of the messages determine, based on some criteria, whether the first satellite can be used as a correction by, for example, checking whether a message received from the first satellite has integrity. If so, the second satellite then uses the first satellite as a correction source. See, in particular, the abstract, figure 2-3, and columns 2-4. In addition, figure 2 shows a layout in which the message from a first satellite is broadcasted and received. Clark also discloses synchronizing signals between at least two satellites (columns 7 and 8, in particular).

While Applicant can be his/her own lexicographer, a claim cannot be examined or become patentable solely based on the language or terminology used therein. A claim

should be examined for the subject matter being claimed not the language or terminology being used.

Even, assuming arguendo, the patent to Clark does not contain the language as claimed in present application, this situation does not render the claimed invention patentable over the patent to Clark. In this case the court is in Dix-Seal Corp. v. New Haven Trap Rock Co., 236 F. Supp. 914, 144 USPQ 57 (D. Conn. 1964) stated that "[I]f exact identity were required, 102 would become a paper defense, for then what is earlier put in use with minor changes later could be patented and that which the law intended the public to have would be considered an infringement."

Furthermore, in In Dewey & Almy Chem. Co. v. Mimex Co., 124 F.2d 986, 52 USPQ 138 (2d. Cir. 1942), the court stated that "[I]f the claimed invention can be found within the ambit of a single prior art reference, then the invention has been anticipated. In Straussler v. United States, 399 F.2d 670, 671, 143 USPQ 443, 443-44 (Ct. Cl. 1964), the court of claims indicated that "[T]he test for determining if a reference anticipates a claim of a patent is whether the reference contains within its four corners adequate directions for the practice of the patent claim invalidated ... Stated another way, the reference must disclose all the elements of the claimed combination, or their mechanical equivalents, functioning in substantially the same way to produce substantially the same result."

It is found, contrary to applicant's assertion, that Clark discloses "receiving correction messages for a selected satellite, determining the integrity, i.e. whether the at least one criterion is satisfied for using the selected satellite as a correction source and

selecting the satellite as a correction is the criterion is satisfied, if not, selecting a second satellite as the correction source.

With regard to the 103(a) rejection, Applicant cannot argue the references individually. In regard to the "computer-readable medium having computer-executable instructions", the mere fact that a method is stored or implemented by a computer does not make the computer-implemented steps patentable distinct over the steps of the method.

In fact, Clark discloses a processor (computer) for performing the aforementioned steps (columns 5 and 6). In addition, Whitehead et al discloses a storage medium encoded with a machine-readable computer code, wherein the storage medium including instructions for causing a computing system to implement the methods steps.

Furthermore, Clark, in particular, discloses the "health" information of the satellites (column 4 and 5). The fields representing the different categories of the information are represented by the codes disclosed in the aforementioned patents, in particular, in column 15 of Whitehead et al.

To the extent that the response to the applicant's arguments may have mentioned new portions of the prior art references which were not used in the prior office action, this does not constitute new a new ground of rejection. It is clear that the prior art reference is of record and has been considered entirely by applicant. See In re Boyer, 363 F.2d 455, 458 n.2, 150 USPQ 441, 444, n.2 (CCPA 1966) and In re Bush, 296 F.2d 491, 496, 131 USPQ 263, 267 (CCPA 1961).

The mere fact that additional portions of the same reference may have been mentioned or relied upon does not constitute new ground of rejection. In re Meinhardt, 392, F.2d 273, 280, 157 USPQ 270, 275 (CCPA 1968).

Accordingly, the rejections are sustained and reproduced below, and this office action is made final.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-3, 5-10, 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Clark [6,462,707].

Clark discloses a satellite position monitor, wherein a first space-based GPS satellite broadcast a GPS navigation message. The GPS message is received by a second space-based GPS satellite, which determines the integrity and reliability of the navigation message. According to Clark, the second satellite is used a correction source for correcting the message received from the first satellite. It is determined as a criterion wherein the correction messages received from h4e satellite are reliable. See abstract, columns 2-3 and 7. Furthermore, Clark discloses comparing the message from the first satellite so as to determine or create a differential position as a criterion to determine integrity of the message. See columns 2-3. As described in column 3, this process is repeated, i.e., performed periodically. See also column 8. Clark also discloses a GPS system having a processor (100), a memory (118) in communication with the processor and receiver in communication with the processor for receiving GPS signals and WAAS correction signals (columns 3 and 4). According still to Clark, a desired source is determined based upon predefined criteria. See columns 5, 7-8.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 14-17, 19, 27-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark '707 in view of Whitehead et al [6,469,663].

While Clark discloses a GPS system having a processor (100), a memory (118) in communication with the processor and receiver in communication with the processor for receiving GPS signals and WAAS correction signals, Clark does not specifically mention that the receiver receives both GPS signals and WASS signals. Whitehead et al, on the other hand, discloses a method and system for GPS and WAAS carrier phase measurements for relative positioning. According to Whitehead et al, there is provided a GPS/WAAS receiver that receives both GPS signals and WAAS signals. According further to Whitehead et al, the receiver includes a digital processing circuitry, a microprocessor, memory, and executable code and variable data stored in the memory operating in a conventional manner for decoding the navigation data; receiving and decoding reference data signals including those of WAAS code and carrier phase and the GPS code and carrier phase. Furthermore, the receiver is a portable receiver and comprises a wireless communication link (device). The system according to Whitehead et al comprises executable code, which may be embodied in the form of computer-implemented processes and apparatuses for practicing those processes. Thus, it would have been obvious to one skilled in the art at the time of the invention to be motivated to modify the system of Clark by incorporating the features from the method and system of Whitehead et al because such modification, as suggested by Whitehead et al, will provide faster and more reliable integer ambiguity resolution, while improving accuracy and reliability of the system.

Allowable Subject Matter

6. Claims 4, 11, 13, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. Claims 20-26 are allowed.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacques H Louis-Jacques whose telephone number is 703-305-9757. The examiner can normally be reached on M-Th 6:30 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black can be reached on 703-305-8233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacques H Louis-Jacques
Primary Examiner
Art Unit 3661

/jlj

Jacques H. Louis-Jacques
JACQUES H. LOUIS-JACQUES
PRIMARY EXAMINER